



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,100	09/26/2003	Erwin R. John	50124/01101	7113

7590 05/28/2008
FAY KAPLUN & MARCIN, LLP
Suite 702
150 Broadway
New York, NY 10038

EXAMINER

BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
----------	--------------

3763

MAIL DATE	DELIVERY MODE
-----------	---------------

05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,100

Applicant(s)

JOHN, ERWIN R.

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 47-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 47-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 9, 10, 12-19, 21, 23, 27, 28, 30-35, 47-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich et al (US 2005/0038371) in view of Cancro et al (US 2004/0116798). Reich discloses a method comprising the steps of inserting a first 13 and second 12 conduit into a patient's body, the conduits are open to a portion of the patient's CNS with direct access to CSF, the first conduit opens to a first reservoir 40 of material to be introduced into the CSF and the second conduit opens to drain CSF permanently withdrawn from CNS (page 2, paragraph 0014). The device treats neurological conditions that may be brought on by a chemical imbalance by increasing the turnover rate of the CSF thereby removing CFS having a high level or deleterious chemicals and replacing it with CSF of a normal concentration. The second conduit opens into the peritoneal cavity and the flow of CSF is controlled by a second pump 24. The intracranial pressure of the patient is monitored by a sensor 29.
3. Claims 1, 20, 53 differ from Reich in calling for the step of detecting and analyzing brain activity of a patient. Claim 2, 24 differ in calling for the brain activity to be detected using QEEG. Claim 49 calls for the brain activity to be compared to normal brain activity. Cancro teaches a method for investigating central nervous system disorders comprising the steps of analyzing brain activity to determine the effectiveness of a treatment using QEEG to determine normal from abnormal brain activity (Page 3,

Art Unit: 3763

paragraph 0029, Page 4). Determining abnormal brain activity inherently includes the step of comparing the brain activity to normal brain activity. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Reich to include the steps of monitoring brain activity using QEEG as taught by Cancro to determine normal from abnormal brain activity so that a medical professional can evaluate the treatment method.

4. Claims 5, 11, 22, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich in view of Cancro as applied to claims 1, 20 above, and further in view of Harper et al (US 6436091). Claims 5, 11, 22, 29 differ from the teachings above in calling for the pump to be an osmotic pump. Harper teaches a method for delivering a pharmaceutical agent comprising an osmotic pump that allows the infusion rate to be adjusted (Col. 2, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the pump of Reich in view of Cancro to be an osmotic pump as taught by Harper so that the infusion rate of the device can be adjusted.

5. Claims 7, 8, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich in view of Cancro as applied to claims 1, 20 above, and further in view of Brengle et al (US 20030130645). Claims 7, 8, 25, 26 differ from the teachings above in calling for the device to include a plurality of chambers and a plurality of pumps. Brengle teaches a device of delivering medical fluid comprising a plurality of chambers controlled by a plurality of pumps so that the treatment can be tailored to fit the patient's needs (Page 1, paragraph 0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device above to include a plurality of

Art Unit: 3763

chambers and a plurality of pumps as taught by Brengle so that the treatment can be tailored to fit the patient's needs.

Response to Arguments

6. Applicant's arguments, see pages 2-4, filed 2/19/08, with respect to the rejection(s) of claim(s) 1-4,5,9,10,12-18,20,21,23,24,27,28,30-34 under Gijsbers in view of Cancro have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Reich in view of Cancro.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

/L. A. B./
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763